



PUBLIC NOTICE

Federal Communications Commission
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DA 14-1613

November 7, 2014

**CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON PETITION
FOR DECLARATORY RULING AND/OR WAIVER FILED BY BIJORA, INC.**

CG Docket No. 02-278
CG Docket No. 05-338

Comment Date: November 21, 2014

Reply Comment Date: November 28, 2014

On October 7, 2014, Bijora, Inc. (Petitioner) filed a request for declaratory ruling and/or waiver seeking clarification that section 64.1200(a)(4)(iv) of the Commission's rules¹ does not apply to text message advertisements sent with the prior express consent or permission of the recipient.² Specifically, the Petitioner seeks a declaratory ruling that section 64.1200(a)(4)(iv) does not apply to solicited text messages or that section 227(b) of the Communications Act, as amended, is not the statutory basis of that rule.³ In the alternative, Petitioner requests that the Commission grant a retroactive waiver of section 64.1200(a)(4)(iv) with respect to text message ads that have been transmitted with prior express permission of the recipient.⁴ With this Public Notice, we seek comment on the Petition to the extent described above.

¹ Section 64.1200(a)(4)(iv) provides that "a facsimile advertisement that is sent to a recipient that has provided prior express invitation or permission to the sender must include an opt-out notice that complies with the requirements in [section 64.1200(a)(4)(iii)]." See 47 C.F.R. § 64.1200(a)(4)(iv).

² See *Petition of Bijora, Inc. for Declaratory Ruling and/or Waiver*, CG Docket Nos. 02-278, 05-338 (filed Oct. 7, 2014) (Petition). Although the Petition makes reference to faxes, it is apparent from the factual background and substantive discussion that it seeks clarification of the rule as it relates to text messages. We also note that the Commission has recently addressed similar arguments made in the context of fax ads. As a result, it is unnecessary to seek additional comment on the application of this rule to fax ads, and we therefore limit our consideration to text messages. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005; Application for Review filed by Anda, Inc.; Petition for Declaratory Ruling, Waiver, and/or Rulemaking Regarding the Commission's Opt-Out Requirement for Faxes Sent with the Recipient's Prior Express Permission*, CG Docket No. 02-278, 05-338, Order, FCC 14-164 (rel. Oct. 30, 2014).

³ See Petition at 6-11.

⁴ *Id.* at 12-13 (contending that strict compliance with the rule "would be inequitable, unduly burdensome, and contrary to the public interest" because the Petitioner is "facing a multi-billion dollar class action lawsuit for an alleged failure to include appropriate opt-out notices on texts sent to plaintiffs who have suffered no actual harm").

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁵ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

⁵ 47 C.F.R. §§ 1.1200 *et seq.*

FOR FURTHER INFORMATION CONTACT: Richard D. Smith, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (717) 338-2797; or Richard.Smith@fcc.gov.

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